

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL MISC. APPLICATION No. 7297 of 1997

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APPEARANCE ;

Mr. Yogesh Lakhani for Applicant

Mr. U.A Trivedi APP for State  
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CORAM ; R. BALIA, J.

24-12-1997

ORAL ORDER

The learned counsel for petitioner urges that in the present case arising out of C.R No. I-140/96 registered at Chansma Police Station, applicants Rameshbhai Amrutbhai, Applicant No. 1 as well as Himatbhai Karamsibhai both have been accused of identical acts namely giving blow by Dhariya on the head of deceased Karamsibhai. The post-mortem report of deceased Karamsibhai shows no external injury on the head and he is stated to have died due to internal head injury. The said Himatbhai Karamsibhai had been released on bail by Order of this Court dated 24th April, 1997 in Criminal Misc. Application No. 1649 of 1997. About petitioner No. 2, the learned counsel for applicant submits that the blows which are attributed to have been caused by the said application has not resulted in serious injury to the receipient Mohanbhai and his offence is much lesser than what is attributed to have been caused by Ramesh Amrutlal and Himatbhai Karamsibhai. In that view of the matter, learned counsel for applicants urge for releasing of the two applicants on bail who are under trial.

The learned APP has opposed the grant of bail primarily on the ground that on earlier ocasion bail applciation of these two applicants have been refused, however, prima facie he has not distinguished the case of Himatbhai Karamsibhai and Rameshbhai Amrutbhai at this stage on the basis of material available on record.

The learned counsel for petitioner urges that earlier when the bail application was moved on behalf of

the three accused persons viz., Rameshbhai Amrutbhai, Himatbhai Karamsibhai and Kanjibhai Laxmanbhai, while Himatbhai Karamsibhai is involved in the present case only but the present applicants viz., Rameshbhai Amrutbhai and Kanjibhai Laxmanbhai were facing trial in another case under Section 307, in respect of an incident which is alleged to have taken place on the very day on which the incident under consideration in present case has taken place. In view of this, the bail of the petitioners were not likely to be considered favourably at that stage. Therefore, they withdrew the application at that stage. Since both the applicants have been acquitted in the said other case on 13th October, 1997. In such change of circumstances, now the present applicants are also facing the same trial with Himatbhai Karamsibhai and the distinguishing feature existing at the earlier state having disappeared, the petitioners have urged for considering their application on parity with Himatbhai, in the changed set of circumstances.

Without going into merits of the case against the petitioners the prayer for now being considered on parity with Himatbhai deserves consideration. Accordingly this application is allowed and the petitioners are directed to be released on bail in connection with C.R No. I-140/96 registered in Chansma Police Station, on his executing a personal bond of Rs. 5,000/= (Rupees Five thousand only) and one surety in the like amount to the satisfaction of the Sessions Court, Mehsana and subject to the conditions that he shall;

- (a) not take undue advantage of their liberty or misuse their liberty;
- (b) not act in a manner injurious to the interest of the prosecution;
- (c) maintain law and order;
- (d) mark his presence before Chansma Police Station on every 1st and 15th of the month any time between 9.00 A.M and 5.00 P.M;
- (e) not leave the local limits of Ziliya village without the prior permission of the Sessions Judge at Mehsana.
- (f) furnish the address of his residence at the time of execution of the bond and shall not change his residence without prior permission of this Court;

3. If breach of any of the above conditions is committed, the Sessions Judge at Mehsana will be free to issue warrant or take appropriate action in the matter.

4. Bail before the lower Court having jurisdiction to try the case.

Rule is made absolute accordingly. Direct service is permitted.

{R. Balia, J.}

Prakash\*